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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Interconnection Between Local Exchange
Carriers and Commercial Mobile Radio
Service Providers

CC Docket 95-185

Equal Access and Interconnection Obligations
Pertaining to Commercial Mobile Radio
Service Providers

CC Docket 94-54

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REPLY COMMENTS OF COMMNET CELLULAR INC.

CommNet Cellular Inc. ("CommNet Cellular"), pursuant to Sections 1.415 and 1.419 of the Commission's Rules, hereby submits its reply comments on behalf of itself and its wholly owned subsidiary CommNet Paging Inc. ("CommNet Paging"), in response to the Commission's Notice of Proposed Rule Making ("NPRM") in CC Docket Nos. 95-185 and 94-54.¹

CommNet Cellular owns interests in 82 licensed cellular radiotelephone systems, including ten Metropolitan Statistical Area ("MSA") and 72 Rural Service Area ("RSA") markets. It manages the operations in 55 markets, of which it has a majority ownership in 44. In the markets it manages, CommNet Cellular has built a highly efficient network composed of approximately 300 cell sites that require only ten separate switching facilities to provide service covering this vast expanse of territory. This network provides cellular telephone service in nine states, encompassing 4.2 million pops and over 15,000 highway miles. CommNet Paging, a wholly owned subsidiary of CommNet Cellular, is a common carrier paging licensee or applicant in most of the metropolitan and rural markets where its parent company currently provides cellular service.

¹ CommNet Cellular and CommNet Paging are herein sometimes referred to collectively as "CommNet."

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CommNet supports the Commission's efforts to establish pro-competitive policies to govern interconnection compensation between local exchange service providers ("LECs") and commercial mobile radio service ("CMRS") providers. Specifically, CommNet believes that the Commission's "bill and keep" proposal is a rational and fair interim solution to address interconnection compensation between LECs and CMRS providers that exchange traffic and offer two-way services. The Commission should move forward expeditiously with its proposal in this regard. However, the Commission should also recognize that bill and keep is not a rational solution for all CMRS providers. Paging carriers, who provide one-way services, receive no compensation from LECs (and other co-carriers) for the switching and transport functions they perform in terminating traffic. Application of a bill and keep policy in this context further advances this disparity and will hinder the natural development of the paging industry as a competitive provider of communications services. Therefore, the Commission should not apply bill and keep to paging carriers. If the Commission fails to establish interconnection and compensation standards that are appropriate to the unique characteristics of paging, it will create artificial competitive advantages for the LECs and two-way CMRS industry.

I. BILL AND KEEP IS A RATIONAL INTERIM SOLUTION TO ADDRESS INTERCONNECTION COMPENSATION BETWEEN LECS AND CMRS PROVIDERS THAT OFFER TWO-WAY SERVICES.

CommNet supports the Cellular Telecommunications Industry Association ("CTIA") and other commenters who believe that the Commission's bill and keep proposal (or "reciprocal termination," as CTIA terms it) is a rational interim solution to address interconnection compensation arrangements between LECs and CMRS providers that exchange communications traffic and offer two-way services. Bill and keep roughly approximates each carrier's marginal costs for traffic termination; it eliminates the excessive costs and delay associated with cost

allocation proceedings; and it properly accounts for the disparity in market power between LECs and their two-way CMRS competitors. However, as a number of commenters have recommended, the Commission should go one step further and mandate that the costs of dedicated interconnection facilities (*i.e.* entrance facilities and tandem switched transport) be shared equally among CMRS providers and LECs.

As the comments of CTIA and others illustrate, the establishment of a rational framework for the exchange and termination of traffic between and among LECs and CMRS carriers is crucial to the continued development of competition in the wireless marketplace. CommNet Cellular believes that the competitiveness of the cellular services which it provides will improve as a result of the Commission's efforts to reduce this historical disparity in bargaining power between LECs and CMRS providers. Indeed, equality in negotiating local interconnection rates and terms must exist before true local exchange competition can develop and the Commission's vision for a wireless local loop can be realized.

CommNet Cellular's experience in negotiating cellular interconnection agreements with numerous LECs has shown a wide disparity between interconnection rates offered by RBOCs and those offered by independent LECs. CommNet Cellular's systems are charged an average rate of five cents per minute for local interconnection. With this rate, CommNet Cellular's interconnection costs alone would exceed the price most LEC customers pay for local exchange service. However, CommNet Cellular has little in the way of leverage for negotiating more favorable interconnection arrangements with LECs. The Commission's bill and keep proposal addresses this disparity and provides a good starting point for developing a logical and fair long-term solution to the issue of co-carrier reimbursement of costs.

a. The Commission's Long-Term Solution Should Extend Beyond Local Switching and Call Termination Costs

CommNet agrees with commenters such as Sprint Spectrum/American Personal Communications ("Sprint/APC") and Century Cellunet, Inc. ("Century") that advocate bill and keep methodology as an interim compensation scheme but believe the Commission's long-term solution to CMRS interconnection should extend beyond reimbursement for local switching and call termination costs. CommNet believes that the Commission's interim proposal overlooks the costs of dedicated interconnection facilities, which continue to be borne by cellular carriers. As Century has noted, the Commission's bill and keep proposal "would continue to burden cellular carriers with unwarranted costs, and would simultaneously encourage LECs to shift charges for local switching and termination to reimbursable charges." Comments of Century at 5. Therefore, CommNet advocates the Commission's extension of the bill and keep approach to all elements of network interconnection, requiring co-carriers to share the costs of dedicated interconnection facilities.

b. The FCC Has the Authority to Regulate LEC Rates for Interconnection with CMRS Providers

CommNet supports CTIA and other commenters who submit that Section 332(c) of the Communications Act of 1934, as amended (the "Act"), gives the Commission plenary authority over LEC rates for interconnection with CMRS providers. Congress unequivocally preempted state rate and entry regulation of CMRS when it amended Section 332 of the Act to provide that "no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service." 47 U.S.C § 332(c)(3). In that same legislation, Congress amended Section 2(b) to provide that the Act does not affect the states' retained jurisdiction over intrastate services "except as provided in . . . Section 332." 47 U.S.C. § 152(b). Thus, Congress clearly intended a uniform federal regulatory framework (as opposed to a dual federal/state regime) apply to all commercial mobile services. This arrangement was

not altered by the Telecommunications Act of 1996 (the "1996 Act"), which expressly preserves the removal of state jurisdiction over CMRS interconnection agreements. *See Comments of CTIA at pps. 58-64.*

II. BILL AND KEEP IS NOT AN APPROPRIATE COST RECOVERY MECHANISM FOR PAGING CARRIERS THAT PROVIDE ONE-WAY SERVICES

While bill and keep may be very appropriate for cellular, PCS, and other two-way CMRS offerings, it is clearly not an appropriate cost recovery mechanism for traditional paging carriers that offer exclusively one-way services. In this regard, CommNet supports the comments of Paging Network, Inc. ("PageNet"), which establish a compelling case for the Commission to curb unreasonable LEC pricing practices for all CMRS providers, including paging carriers. CommNet urges the Commission to use this opportunity to correct the historic imbalance in bargaining power and relieve paging carriers of the obligation to pay for LEC originating facilities and functions for which LECs are already fully compensated by their end users.

a. Co-Carriers are Entitled to Compensation for the Use of Their Facilities by an Originating Carrier

Implicit in a bill and keep compensation model is the assumption that the interconnecting competitive carriers *are entitled to recover the cost of call termination services from one another*. However, this has never been the case with traditional paging services, which do not originate traffic yet are forced by the LECs to pay unreasonably high prices for interconnection facilities and service. Bill and keep is clearly not appropriate for paging because traffic on traditional paging networks are totally one-way. Bill and keep results in a windfall to the LECs, which are allowed to terminate their traffic on paging networks free of charge, and denies paging carriers *any* compensation for the switching and transport functions they perform in terminating traffic. As PageNet demonstrates, paging carriers are competitors to traditional wireline local services and must be viewed as co-carriers that are entitled to compensation for

the termination services they provide. Comments of PageNet at 15.

PageNet's comments also make clear that the charges demanded of paging carriers for interconnection with LECs are grossly excessive and represent *double* (and in some cases *triple*) recovery of network costs. Comments of PageNet at 9. Such pricing policy inflates the cost of paging interconnection and provides excessive and therefore undue compensation to the LEC. As a result, the cost of paging services for consumers is artificially high. The Commission should therefore abandon its proposal to require paging carriers to pay LEC entrance facility charges for the link between the LEC switch and the paging carrier's terminal facilities.

CONCLUSION


In sum, the Commission's policies should recognize that *all* CMRS services, including one-way CMRS services such as paging, compete with one another, as well as with LECs, in the provision of communications services. Failure to provide compensation for the termination of traffic that is generated on another's network (and for which compensation is already received) artificially distorts the CMRS marketplace, unreasonably favoring one type of carrier over another. CommNet believes that the Commission is taking a step in the right direction by implementing bill and keep as an interim mechanism for compensating LECs and providers of two-way CMRS services, such as cellular and PCS, for the call termination services they provide. However, bill and keep is clearly not the answer to all CMRS interconnection woes if it fails to account for all of the elements of network interconnection, including the costs of dedicated interconnection facilities. The Commission should also abandon its proposal to require paging carriers to pay LEC entrance facility charges for the link between the LEC switch and the paging carrier's terminal facilities. Only after implementing these reasonable measures will the Commission have created a level playing field for all carriers and will competition be enabled to flourish between and among CMRS carriers and LECs.

WHEREFORE, in light of the foregoing, CommNet Cellular Inc. respectfully requests that the Commission act in accordance with the preceding comments.

Respectfully, submitted,

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